

**Internal Revenue Service**

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Telephone Number:

Refer Reply To:

CC:ITA:B06

PLR-134398-07

Date:

September 26, 2008

In Re:

**LEGEND:**

Taxpayer =

Corp. X =  
=

y =

b =

k =

z =

Dear :

This letter responds to your ruling request dated July 26, 2007, concerning the application of section 455 of the Code to a payment that entitles the payer to, among other things, a lifetime subscription to a magazine offered by Taxpayer. Specifically, you request the following rulings.

(1) Taxpayer may defer the portion of a payment attributable to a lifetime magazine subscription under I.R.C. § 455.

(2) Taxpayer's method of determining the portion of a payment attributable to a lifetime magazine subscription is a permissible allocation method under § 455; and

(3) the 25-year period over which Taxpayer recognizes under § 455 the portion of a payment determined attributable to a lifetime magazine subscription is a reasonable period.

## FACTS

Taxpayer is the common parent of an affiliated group that includes Corp X. Corp X computes its income under the accrual method of accounting and is engaged in the business of developing, servicing, and marketing y in k.

For each of the k, Corp X sells a fixed term and lifetime z. Corp X solicits individuals for a lifetime z after they have paid for their first term. The price of a lifetime z varies and is paid in b monthly installments. A lifetime z entitles an individual to several benefits, including a premium gift and a magazine delivered six to eight times a year for life of the individual.

Taxpayer represents that Corp X has a liability within the meaning of § 455(d)(2) to furnish or deliver, on a subscription basis, magazines to each individual who purchases a lifetime z over the lifetime of the individual. Further, taxpayer represents that a portion of the payment received by Corp X from an individual for a lifetime z is an amount which is received in connection with, and is directly attributable to, Corp X's liability to furnish or deliver magazines beyond the close of the taxable year in which such payment is received, and which is income from a subscription to a magazine.

Corp X allocates a payment for a lifetime z only between the premium gift and lifetime magazine subscription; Corp X makes no allocation for any other benefits provided. Taxpayer represents that the allocation is based on an independent valuation analysis. Corp X recognizes as prepaid subscription income under § 455 on a straight-line basis over 25 years the portion of the payment determined attributable to a lifetime magazine subscription.

## LAW AND ANALYSIS

Section 455 provides that a taxpayer may elect to include "prepaid subscription income" in gross income for the taxable years during which a liability to furnish or deliver a periodical exists, rather than for the year income was received. Section 455(d)(1) provides that the term "prepaid subscription income" means any amount (includible in gross income) which is received in connection with, and is directly attributable to, a liability which extends beyond the close of the taxable year in which such amount is received, and which is income from a subscription to a newspaper, magazine, or other periodical. Section 455(d)(2) provides that the term "liability" means a liability "to furnish

or deliver a newspaper, magazine, or other periodical.” Section 455(b)(1) provides that if a taxpayer has elected to apply the provisions of § 455 to a trade or business in connection with which prepaid subscription income is received, and if its liability to furnish or deliver a newspaper, magazine, or other periodical ends for any reason, then so much of the prepaid subscription income attributable to such liability as was not includable in its gross income under § 455 for preceding taxable years shall be included in its gross income for the taxable year in which such liability ends.

Section 456 allows a taxpayer which is a membership organization and which receives prepaid dues income in connection with its trade or business of rendering services or making available membership privileges to elect to include such income in gross income ratably over the taxable years during which its liability to render such services or extend such privileges exists, if such liability does not extend over a period of time in excess of 36 months. In Rev. Rul. 69-132, 1969-1 C.B. 141, a membership organization had two classes of members, general and special, from whom it received dues. General members paid annual dues of 5x dollars in advance for which they received all services and membership privileges of the association. Special members paid annual dues of 10x dollars in advance for which they received the same service and membership privileges as general members and, in addition, had use of exhibit space in the association’s national headquarters. General members had to pay rent for exhibit space. The Service ruled that the portion of the dues paid by special members attributable to the exhibit space in the association’s national headquarters is in the nature of rent and, therefore, is not prepaid dues income to the association, as defined in § 456(e)(1), for purposes of the election under § 456.

### CONCLUSION

The representations above form a material basis for the issuance of this ruling. Based solely on the information and the representations provided, we conclude that Taxpayer may defer under § 455 that portion of the payment received from an individual for a lifetime z which is received in connection with, and is directly attributable to, Corp X’s liability to furnish or deliver magazines beyond the close of the taxable year in which such payment is received, and which is income from a subscription to a magazine.

We do not address the requested rulings that Taxpayer’s method of determining the portion of a lifetime z payment attributable to a lifetime magazine subscription is a permissible allocation method under § 455, and the 25-year period over which Taxpayer recognizes under § 455 the portion of a payment determined attributable to a lifetime magazine subscription is a reasonable period. Because of the inherently factual nature of such determinations, we are unable to provide the requested rulings. See section 4.02(1) of Rev. Proc. 2008-3, 2008-1, I.R.B. 110.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequence of any aspect of any transaction or item discussed or

referenced in this letter. Further, no opinion is expressed as to the tax treatment of the transaction under the provisions of any other section of the Code and regulations which may be applicable thereto, or the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction which are not specifically set forth by the above ruling.

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under section 6110.

In accordance with the provisions of a Power of Attorney currently on file with this office, a copy of this letter is being sent to the taxpayer's authorized representative(s).

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

GEORGE BAKER  
Senior Technician Reviewer  
Branch 7  
Office of Associate Chief Counsel  
(Income Tax and Accounting)

Enclosures:

Copy of letter

Copy for section 6110 purposes